REMARKS

By the present amendment, Applicants have amended Claims 1 and 7, and canceled Claims 8-11. Claims 1-7 remain pending in the present application. Claim 1 is an independent claim.

In the Office Action dated May 8, 2006, the Examiner rejected Claim 4 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the reference entitled "A Vision of Apple Fries" (hereinafter referred to as Granny's Fried Apples) in view of Yamazaki et al. (U.S. Patent No. 3,962,355) and Fisher et al. (U.S. Patent No. 3,723,137). Claims 4-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Granny's Fried Apples reference in view of Yamazaki et al. and Fisher et al., and further in view of Higgins et al. (U.S. Patent No. 5,849,351) and/or Sloan et al. (U.S. Patent No. 5,141,759). Claims 7-11 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over the Granny's Fried Apples reference in view of Yamazaki et al. and Fisher et al., and further in view of Roberts et al. (U.S. Patent No. 4,889,730) and Glantz et al. (U.S. Patent No. 4,559,232).

With regard to the rejection of Claim 4 as being indefinite, the Examiner concludes that the powder mixture recited in the instant dependent claim is broader than the corresponding powder set forth in Claim 1 from which Claim 4 depends. In the interest of clarity, Applicant has amended independent Claim 1 to recite "a powder consisting essentially of a mixture of corn starch and rice

flour," which is broader than the specific amounts of mixture components recited in dependent Claim 4. Also, in the interest of brevity, Applicant has amended dependent Claim 7 to include the subject matter of Claims 8-11 rewritten in Markush form. Applicants respectfully submit that the claims presently appearing in the application are in full compliance with the specific requirements of 35 U.S.C. § 112, second paragraph.

Independent Claim 1 has been amended to more particularly define the subject matter in question. Applicants will advance arguments herein below to illustrate the manner in which the invention defined by the present claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Amended independent Claim 1 is directed to a method of producing a frozen apple product used in making apple French fries, which includes, in part, the steps of: slicing a cored apple into apple pieces of predetermined shapes, spraying the apple pieces with water and coating the wet apple pieces with a powder consisting essentially of a mixture of corn starch and rice flour. The claimed method further includesfreezing the coated apple pieces to produce a frozen apple product, and packaging the frozen product of coated apple pieces in predetermined quantities for storage and subsequent distribution to wholesale and retail outlets. Applicants' method produces a frozen product of coated apple pieces that can be deep fried to prepare a healthy and tasty alternative to potato French fries.

Applicants contend that the Granny's Fried Apples reference taken in combination with Yamazaki et al. and Fisher et al., or any of the other secondary references of record, fail to reasonably suggest a method for producing a frozen product of coated apple pieces having the combination of procedural steps as defined by the present claims. The Granny's Fried Apples reference discloses a method for preparing apple fries that includes slicing Granny Smith apples with a French fry cutter, dredging them in cinnamon sugar and deep frying the cinnamon-coated apple slices in oil. No mention is made in this primary reference of Applicants' steps of: slicing a cored apple into apple pieces, spraying the apple pieces with water and coating the wet apple pieces with a powder consisting essentially of a mixture of corn starch and rice flour. Moreover, there appears no suggestion in this reference of freezing the coated apple pieces to produce a frozen apple product, and packaging the frozen product of coated apple pieces for storage and subsequent distribution as set forth by the present claims.

The Examiner relies upon Yamazaki to show that it is conventional in the food art to sequentially subject apples to washing, paring, coring, cutting and seasoning prior to frying. However, this reference is directed to a method of producing dehydrated fried apples that includes soaking the apple pieces in a sugar solution, drying the seasoned apple pieces with hot air, frying the dried apple pieces and cooling the fried pieces in a vacuum until they harden. There appears no suggestion in Yamazaki of coating the wet apple pieces with a powder mixture of corn starch and rice flour, or

freezing the coated apple pieces to produce a frozen apple product, and packaging the frozen product of coated apple pieces for storage and subsequent distribution as set forth by the present claims.

The Fisher reference discloses a method of forming a continuous batter directly on a food piece by wetting a bare food piece with a fluid, dipping the wet piece in a dry coating composition and immersing the coated piece in the fluid to form a highly viscous, dripless batter directly on the food piece. Water is taught as the preferred fluid and Fisher further teaches that the dry coating composition may be formulated as a fryable batter composition comprising an ungelatinized and gelatinized starch. As examples of ungelatinized starches, Fisher lists cornstarch and rice flour, among others. Fisher further discloses that the batter coated food product may be subjected to frying after freezing and shipping to the consumer.

The Examiner concludes that it would be obvious to one of ordinary skill in the art to modify the method for preparing apple fries as disclosed by the Granny's Fried Apples reference in light of the conventional preparatory steps taught by Yamazaki and the coating composition and freezing/packaging procedure taught by Fisher. However, the method of producing dehydrated fried apples as taught by Yamazaki is so procedurally unrelated to the method and resulting apple fries as taught by the primary reference that any assumption that one of ordinary skill in the art would likely be motivated to combine these references in the manner suggested by the Examiner is completely unfounded.

With regard to the Fisher reference, there appears no realistic suggestion that the reference method would be suitable for coating apple pieces as specifically set forth by Applicants' claims. The only representative example of a food piece specifically disclosed by Fisher is chicken. Moreover, Fisher fails to teach a coating powder composition "consisting essentially of a mixture of corn starch and rice flour" as called for by Claim 1. Note that Fisher's fryable batter composition includes as much as 45 percent by weight of thegelatinized starch. It is further noted that in Fisher's method the coated food piece is immersed in a fluid and additional amounts of the fluid are absorbed to form a "thick" batter composition that is "highly viscous," whereas Applicant's coating layer is preferably "relatively thin" as described under the specification at page 7, lines 15-16.

Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczak*, 175 F.3rd 994, 50 USPQ2d 1614 (Fed.Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior

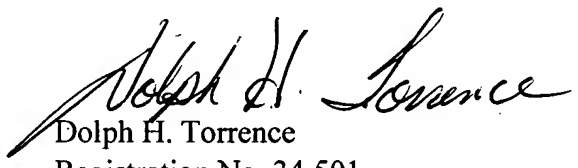
art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

For the reasons discussed supra, Applicants contend that one skilled in the art would not be motivated or guided by the prior art to combine these references in the manner suggested by the Examiner. Moreover, Applicants further contend that the realistic teachings afforded by the secondary references to Yamazaki and Fisher fail to supplement the above noted deficiencies of the Granny's Fried Apples primary reference. The same can be said for the secondary references to Higgins et al., Sloan et al., Roberts et al. and Glantz et al. Thus, one of ordinary skill in the art without the benefit of Applicants' own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of procedural steps that forms the basis of the instant claims. For at least these reasons, Applicant respectfully submits that independent Claim 1, as amended, and corresponding dependent Claims 2-7 are allowable over the prior art of record.

The remaining references cited of record by the Examiner but not applied against the claims have been duly considered, but are not believed to be any more relevant to Applicant's invention than those cited by the Examiner in the rejections.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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Attachments: Petition for Extension of Time
Check in the amount of $510.00